

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to voluntary diversity plans and open enrollment

The State Board of Education hereby amends Chapter 17, “Open Enrollment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, House File 228; 2021 Iowa Acts, Senate File 260; and 2021 Iowa Acts, House File 847.

Purpose and Summary

2021 Iowa Acts, House File 228, eliminates the ability of school districts to offer voluntary diversity plans. 2021 Iowa Acts, House File 847, makes substantive changes to open enrollment. 2021 Iowa Acts, Senate File 260, provides additional requirements for Medicaid billing for students with disabilities who participate in open enrollment. These changes are incorporated in this rule making, as well as nonsubstantive changes in grammar and word choice.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 30, 2021, as **ARC 5745C**. A public hearing was held on July 20, 2021, at 9:30 a.m. in Room B100, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa, with a videoconference option. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board on August 5, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 29, 2021.

The following rule-making actions are adopted:

ITEM 1. Rescind the definitions of “Diversity plan,” “Eligible district,” “Minority student” and “Socioeconomic status” in rule **281—17.2(282)**.

ITEM 2. Amend rule **281—17.2(282)**, definition of “Court-ordered desegregation plan,” as follows:

“Court-ordered desegregation plan” means a ~~plan that is under direct court order to avoid racial isolation in the district~~ decree, judgment, or order entered by a court in response to a case or controversy alleging the district engaged in unlawful segregation. A desegregation plan is not “court-ordered” merely because a school district seeks approval of a voluntarily developed desegregation plan.

ITEM 3. Amend paragraph **17.3(2)“c”** as follows:

c. The parent/guardian may withdraw an open enrollment request ~~anytime~~ any time prior to the first day of school in the resident district. After the first day of school, an open enrollment request can only be changed during the term of the approval by the procedures of subrules 17.8(4), 17.8(5), 17.8(6), and 17.8(7).

ITEM 4. Amend subrule 17.3(3) as follows:

17.3(3) *Exception to process when resident district is under ~~voluntary or~~ court-ordered desegregation.* If the resident district has a ~~voluntary or~~ court-ordered desegregation plan ~~requiring the district to maintain minority and nonminority student ratios~~, the request for open enrollment shall be filed solely with the district of residence on or before March 1 of the school year preceding the school year for which open enrollment is requested. The superintendent of the resident district may deny a request under this subrule unless the request is made on behalf of a student whose sibling already actively participates in open enrollment to the same receiving district to which open enrollment is sought for this student. A denial by the superintendent may be appealed to the board of the district in which the request was denied. A decision of the local board to uphold the denial may only be appealed to the district court in the county in which is located the primary business office of the district that upheld the denial of the open enrollment request.

ITEM 5. Amend subrule 17.4(1) as follows:

17.4(1) Good cause related to change in the pupil’s residence shall include:

a. A change in the family residence due to the family’s moving from the district of residence ~~anytime~~ any time after March 1 of the school year preceding the school year for which open enrollment is requested.

b. A change in the child’s residence from the residence of one parent or guardian to the residence of a different parent or guardian.

~~b. c.~~ A change in the state of residence allowing a parent/guardian moving into an Iowa school district from out of state to obtain open enrollment to a different district from their new district of residence.

~~c. d.~~ A change in the marital status of the pupil’s parents.

~~d. e.~~ A guardianship or custody proceeding.

~~e. f.~~ Placement of the child in foster care.

~~f. g.~~ Adoption.

~~g. h.~~ Participation in a foreign exchange program.

i. Initial placement of a prekindergarten student in a special education program requiring specially designed instruction.

~~h. j.~~ Participation in a substance abuse or mental health treatment program.

ITEM 6. Adopt the following new paragraph 17.4(2)“e”:

e. Other actions.

(1) Revocation of a charter school contract after March 1 as provided in Iowa Code section 256F.8.

(2) The child’s assigned attendance center in the district of residence is identified as in significant need for improvement. “Significant need for improvement” means a school attendance center designated by the department of education under the priority category under the Iowa school performance profiles for two or more of the immediately preceding school years or identified for comprehensive support and improvement under the federal Every Student Succeeds Act, Pub. L. No. 114-95, or an equivalent objective federal standard, for two or more of the immediately preceding school years.

ITEM 7. Amend paragraph 17.4(6)“a” as follows:

a. Upon affirmative vote of a majority of its board to do so, the resident district shall file a written appeal to the director within 30 days of receipt by the resident district of notification by the board of the receiving district of the approval by the receiving district of a late-filed open enrollment request. The written appeal shall state the name and grade level of the affected student, the name of the receiving district, the date of approval by the board of the receiving district, the date the resident district was notified of the approval, and a brief statement explaining why the resident district board believes there is no good cause for the request to have been filed and approved after March 1. The appeal shall be signed by the president of the board of the resident district and shall have attached to it a copy of the disputed open enrollment request and the minutes of the board meeting at which the resident district board voted to appeal. An appeal is timely filed if it is postmarked or delivered personally or via facsimile transmission or electronic mail to the director within the 30-day time period.

ITEM 8. Amend rule 281—17.5(282) as follows:

281—17.5(282) Filing after the March 1 deadline—harassment, failure to respond to academic needs, or serious health condition. A parent/guardian may apply for open enrollment after the filing deadline of March 1 of the school year preceding the school year for which open enrollment is requested if the parent’s/guardian’s child is the victim of repeated acts of harassment that the resident district cannot adequately address, if there is a consistent failure of the resident district to reasonably respond to a student’s failure to meet basic academic standards after notice provided by a parent or guardian, or if the child has a serious health condition that the resident district cannot adequately address. If either any of these conditions exists, the parent/guardian shall be permitted to apply for open enrollment by sending notification to both the resident and receiving districts.

17.5(1) Board action. The board of the resident district shall act on the request within 30 days of its receipt. If the request is denied, the parent/guardian shall be notified by the district superintendent within 3 days following board action. If the request is approved, the district superintendent shall forward the approved application form to the receiving district within 5 days following board action and shall notify the parent/guardian within 3 days of this action. The board of the receiving district shall act to approve or deny an open enrollment request within 30 days following receipt of the notice of approval from the resident district. The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within 15 days of board action.

17.5(2) Appeal. A denial by either board of a request made under this rule involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address may be appealed by a parent/guardian to the state board of education pursuant to Iowa Code section 290.1. The state board shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children.

17.5(3) Criteria for determining whether a resident district consistently failed to reasonably respond to a student’s failure to meet basic academic standards. Reserved.

ITEM 9. Amend subrule 17.6(2) as follows:

17.6(2) ~~Voluntary diversity plans or court-ordered~~ Court-ordered desegregation plans. In districts with court-ordered desegregation ~~or voluntary diversity plans~~ where there is a requirement to maintain minority and nonminority student ratios according to the plan, the superintendent of the district may deny

a request for open enrollment if it is found that the enrollment or release of a pupil will adversely affect the district's court-ordered desegregation plan ~~or voluntary diversity plan~~. Open enrollment requests that would facilitate the court-ordered desegregation plan ~~or voluntary diversity plan~~ shall be given priority over other open enrollment requests received by the district. A parent/guardian whose request for open enrollment is denied by the superintendent of the district on the basis of its adverse effect on the district's court-ordered desegregation plan ~~or voluntary diversity plan~~ may appeal that decision to the district board.

ITEM 10. Amend rule 281—17.7(282) as follows:

281—17.7(282) Open enrollment for kindergarten or certain prekindergarten programs. While the regular time frame in requesting open enrollment is that an application should be made no later than March 1 of the school year preceding the school year for which the enrollment is requested, a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence or a parent/guardian of a prekindergarten student enrolled in a special education program and included in the resident school district's basic enrollment under Iowa Code section 257.6(1) "a"(1) may make such application on or before September 1 of that school year. In considering an application for a kindergarten pupil, the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space, the requirements of rule 281—17.11(282), or the requirements of a desegregation plan ~~or order~~.

As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed on or before September 1 under this rule. The timelines established in rule 281—17.4(282) shall apply to applications for a ~~kindergarten~~ pupil under this rule.

ITEM 11. Amend subrule 17.8(2), introductory paragraph, as follows:

17.8(2) Restrictions on participation in interscholastic athletic contests and competitions. Subject to rule 281—17.15(282), a pupil who changes school districts under open enrollment in any of the grades 9 through 12 shall not be eligible to participate in varsity interscholastic athletic contests and competitions during the first 90 school days of enrollment. This restriction also shall apply to enrollments resulting from an approved petition filed by a parent/guardian to open enroll to an alternative receiving district and when the pupil returns to the district of residence using the process outlined in subrule 17.8(4). This 90-school-day restriction does not prohibit the pupil from practicing with an athletic team during the 90 school days of ineligibility. If a pupil is declared ineligible for interscholastic athletic contests and athletic competitions in the pupil's district of residence due to the pupil's academic performance, upon participating in open enrollment, in addition to any other period of ineligibility under this rule, the pupil shall be ineligible in the receiving district for the remaining period of ineligibility declared by the district of residence. This 90-school-day restriction is not applicable to a pupil who:

ITEM 12. Adopt the following new paragraphs **17.8(2)"k"** to **"n"**:

k. Participates in open enrollment because of circumstances that meet the definition of "good cause" under rule 281—17.4(282).

l. Resides in a district in which the board of directors or superintendent issues or implements a decision that results in the discontinuance or suspension of varsity interscholastic sports activities in the district.

m. Participates in open enrollment and the board of directors of the district of residence and the board of directors of the receiving district both agree to waive the ineligibility period.

n. Open enrolls for the school year beginning July 1, 2021, if the pupil's district of residence had a voluntary diversity plan in effect on January 1, 2021, and applicable to the school year beginning July 1, 2021.

ITEM 13. Amend subrule 17.8(6) as follows:

17.8(6) Change in residence when participating in open enrollment. If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian shall have the option to leave the pupil in the receiving district under open enrollment, to open enroll to another school district, or to enroll the pupil in the new district of

residence, thus terminating the open enrollment agreement. If the choice is to leave the pupil under open enrollment or to open enroll to another school district, the original district of residence, as determined on the date specified in Iowa Code section 257.6(1), shall be responsible for payment of the cost per pupil plus any applicable weightings or special education costs for the balance of the school year, if any, in which the move took place, providing the move took place on or after the date specified in Iowa Code section 257.6, subsection 1. The new district of residence shall be responsible for these payments during succeeding years of the agreement.

~~If the move takes place between the end of one school year and the date specified in Iowa Code section 257.6, subsection 1, of the following school year, the new district of residence shall be responsible for that year's payment as well as succeeding years.~~

If the pupil is to remain under open enrollment or to open enroll to another school district, the parent/guardian shall write a letter, delivered by mail or by hand on or before the date specified in Iowa Code section ~~257.6, subsection 1~~ 257.6(1), to notify the original resident district, the new resident district, and the receiving district of this decision.

Timely requests under this rule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2).

ITEM 14. Amend subrule 17.8(7) as follows:

17.8(7) *Change in residence when not participating in open enrollment.* If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program or to open enroll to another school district. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made on or before the date specified in Iowa Code section ~~257.6, subsection 1~~ 257.6(1). Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is on or after the date specified in Iowa Code section ~~257.6, subsection 1~~ 257.6(1), the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

a. This subrule applies in the following circumstances: a change in family residence, a change in a child's residence from the residence of one parent or guardian to the residence of a different parent or guardian, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program.

b. This rule applies to the following children:

- (1) A child who is enrolled in any grade from kindergarten through grade 12.
- (2) A prekindergarten student who is enrolled in a special education program at the time of the request and is not currently using any provision of open enrollment.

ITEM 15. Amend subrule 17.8(9) as follows:

17.8(9) *Appeal procedure.* A parent/guardian may appeal the decision of the board of directors of a school district (resident or receiving) only on an application for open enrollment under Iowa Code section 282.18(5) ~~as amended by 2002 Iowa Acts, House File 2545 and rule 281—17.5(282).~~ This appeal is to the state board of education and shall comply with the provisions of Iowa Code section 290.1. The appeal shall be filed within 30 days of the decision of the district board and shall be in the form of an affidavit signed by the parent/guardian. It shall state in a plain and concise manner what the parent/guardian feels to be the basis for appeal.

ITEM 16. Amend subrule 17.9(3) as follows:

17.9(3) *Economic eligibility requirements for transportation.* A parent/guardian shall be eligible for transportation assistance from the resident district if the household income of the parent/guardian is ~~at or below 160 percent of the federal income poverty guidelines as stated by household size~~ 200 percent

or less of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services. Since the federal ~~income~~ poverty income guidelines are adjusted each year, the department of education shall provide revised eligibility guidelines to school districts each year.

ITEM 17. Amend subrule 17.11(4) as follows:

17.11(4) Finance. The district of residence shall pay to the receiving district on the schedule set forth in subrule 17.10(5) the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency. For children requiring special education, the receiving district shall complete and provide to the district of residence the documentation necessary to seek Medicaid reimbursement for eligible services.

ITEM 18. Rescind and reserve rule **281—17.13(282)**.

ITEM 19. Rescind rule 281—17.14(282) and adopt the following **new** rule in lieu thereof:

281—17.14(282) Court-ordered desegregation plans.

17.14(1) Applicability. These rules govern only the components of a court-ordered desegregation plan as the plan affects open enrollments.

17.14(2) Nature of court-ordered desegregation plan. The language of the court order shall be binding on a district's implementation of open enrollment. The district shall notify the department of any court-ordered desegregation plan and any court-ordered modifications to that plan.

This rule is intended to implement Iowa Code section 282.18 as amended by 2021 Iowa Acts, House File 228.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/25/21.